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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

OLUFEMI S. COLLINS and WANDA
D. COLLINS,

Plaintiffs and Appellants,

v.

JP MORGAN CHASE BANK, et al.,

Defendants and Respondents.

B271612

(Los Angeles County
Super. Ct. No. KC067654)

APPEAL from orders of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Dismissed in part and affirmed in part.

Olufemi S. Collins, Wanda D. Collins, in pro per., for
Plaintiffs and Appellants.

Law Offices of Robert E. Weiss, Cris A. Klingerman, for
Defendants and Respondents Lighthouse Equities Group, Inc.
and Michael Ryan Ambos.

No appearance by Defendant and Respondent The
Auctionarium, Inc.

This is the third of three appeals stemming from the 2015 complaint filed by plaintiffs Olufemi S. Collins and Wanda D. Collins. We previously addressed this complaint in the context of plaintiffs' appeal from judgments entered in favor of defendants not parties to this appeal¹ (*Collins v. JP Morgan Chase Bank N.A.* (Feb. 16, 2017, B267394) [nonpub. opn.] (*Collins II*)). We also file today our opinion in plaintiffs' second appeal from this lawsuit against another set of defendants.² (*Collins v. JP Morgan Chase Bank N.A.* (June 5, 2017, B270587) [nonpub. opn.]).

In this appeal, plaintiffs first contend the court erred in granting judgment in favor of a defaulted defendant, The Auctionarium, Inc. (Auctionarium). They next challenge the orders granting the special motion to strike filed by defendants Lighthouse Equities Group, Inc. (Lighthouse) and Michael Ryan Ambos (Ambos) and awarding those prevailing defendants attorney fees. The appeal is dismissed as to Auctionarium, as the record does not include a judgment or signed order of dismissal. We affirm the orders in favor of Lighthouse and Ambos.

¹ Those defendants were JP Morgan Chase Bank, N.A.; Federal National Mortgage Association, AlvaradoSmith, A Professional Corporation; Sung–Min Christopher Yoo; Lauren Marie Takos; Marvin Belo Adviento; McCarthy & Holthus, LLP; and Gayle Eileen Jameson.

² Those defendants were Asset Management Specialists, Inc. (AMS); County of Los Angeles and Los Angeles County Deputy Sheriffs David Gutierrez (Gutierrez) and Kathy Durdines (Durdines) (collectively, County); Michael Ryan Ambos, Jr., and Michael Sean Durkin.

BACKGROUND

The background facts for this litigation and two earlier lawsuits are recited in detail in two previous unpublished opinions. (*Collins v. JP Morgan Chase Bank* (Apr. 16, 2014, B244252) [nonpub.opn] [*Collins I*]; *Collins II*, *supra*, B267394) [*Collins II*].) To summarize, plaintiffs owned and resided in their home, but fell behind in their mortgage payments and lost the house in a nonjudicial foreclosure. In May 2011, they filed suit against a group of defendants, “alleging that they had conspired to foreclose on the Deed of Trust and obtain title to their house by fraudulently executing and recording documents.” (*Collins I*, *supra*, at *3.) *Collins I* was essentially an action for wrongful foreclosure. Defendants obtained summary judgment, and this court affirmed. (*Id.* pp. *6-*7, *23.)

Although their home had been foreclosed upon, plaintiffs did not leave the property. In 2013, Federal National Mortgage Association (Fannie Mae) initiated an unlawful detainer action against them. In May 2013, Fannie Mae obtained a judgment for possession of the premises.

Los Angeles County Sheriff deputies eventually removed plaintiffs from the home. After plaintiffs’ removal, Lighthouse, a realty company, its licensed agent Ambos, and personnel with Auctionarium entered the property and were involved in disposing of personal property plaintiffs left behind and preparing the real property for sale.

“On May 19, 2015, plaintiffs filed [this] complaint against defendants and other parties who are not subject to this appeal. In summary, plaintiffs allege their eviction in 2013 was unlawful and premised on false documents. . . . Plaintiffs allege five causes of action against defendants: deprivation of their due process

rights in violation of title 42 United States Code section 1983; deprivation of their procedural due process rights under Civil Code section 52.1; unlawful eviction based on defendants allegedly not possessing title to the real property; fraud based on defendants allegedly filing false documents to acquire the real property; and quiet title based on the alleged false documents recorded with the Los Angeles County Recorder.” (*Collins II*, *supra*, (Feb. 16, 2017, B267394), at *5-*6.)

DISCUSSION

I. Auctionarium

Auctionarium made no appearance in the trial court; and at plaintiffs’ request, the clerk entered its default.³ Plaintiffs thereafter sought entry of a default judgment against this defendant. The trial court issued a tentative ruling indicating plaintiffs had not stated any viable causes of action against Auctionarium: “Plaintiff’s declaration admits that the amount of assets that were auctioned off is ‘not known.’ Further, Plaintiff[s] have] not established by competent evidence that Auctionarium wrongfully gained access and wrongfully auctioned off Plaintiff[s]’ assets. In fact, Plaintiffs admit that Los Angeles County Sheriffs removed Plaintiffs from [their] home to allow entry to Auctionarium. The pleadings in this matter establish that Defendant’s entry was pursuant to enforcement of an Unlawful Detainer judgment, which is protected litigation activity.” The court adopted its tentative ruling as the final ruling. It is memorialized in an unsigned minute order.

³ Auctionarium’s failure to appear in this court does not impact our ability to resolve the appeal. (Cal. Rules of Court, rule 8.220(a)(2).)

Plaintiffs have appealed from a nonappealable order. The trial court's decision not to enter the default judgment in their favor is not itself appealable. The entry of an order of dismissal in favor of Auctionarium would be appealable, provided the order is signed or an actual judgment of dismissal is entered. (Code Civ. Proc., §§ 581d, 904.1) But we have neither here. The appeal as to Auctionarium must be dismissed.

We add one comment, however: A complaint that “does not state any cognizable cause of action against” a defendant and “also fails to set forth any clear demand for damages” cannot support a default judgment. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 286.) On this record, had the trial court granted a default judgment in plaintiffs' favor, we would have “remand[ed] the case to the trial court with directions to enter judgment in defendants' favor.” (*Id.* at p. 272.)

II. Lighthouse and Ambos

These two defendants successfully moved to strike the complaint pursuant to Code of Civil Procedure section 425.16.⁴

“A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The

⁴ Section 425.16, provides: “A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (Code Civ. Proc., § 425.16, subd. (b)(1).)

Legislature enacted . . . section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) “The goal [of section 425.16] is to eliminate meritless or retaliatory litigation at an early stage of the proceedings.” (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 806.)

On appeal from the grant of an anti-SLAPP motion, we independently review the record. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.) “Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).) At the first step, “[t]he moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken ‘in furtherance of the [defendant]’s right of petition or free speech under the United States or California Constitution in connection with a public issue,’ as defined in the statute. (§ 425.16, subd. (b)(1).)” (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

Lighthouse and Ambos filed a special motion to strike plaintiffs’ complaint. The motion was supported by a request for judicial notice of (1) a trustee’s deed upon sale, recorded in the Los Angeles County Recorder’s Office on March 28, 2011, and (2) a writ of possession of real property issued in the earlier unlawful

detainer action. Again, the record does not contain a minute order from the hearing or a separate signed court order.

Defendants satisfied the first step in the anti-SLAPP analysis. Lighthouse and Ambos gained entry to the property after plaintiffs lost the unlawful detainer action and were evicted. Plaintiffs' claims against Lighthouse and Ambos arise from their participation in activities associated with the new owner's legitimate possession of plaintiffs' former home. "The prosecution of an unlawful detainer action indisputably is protected activity within the meaning of section 425.16." (*Birkner v. Lam* (2007) 156 Cal. App.4th 275, 281; *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1480-1481 [service of notice to quit, filing of an unlawful detainer action, and threats by the landlord's agent are protected activities for purpose of an Anti-SLAPP motion].)

With the finding that plaintiffs' lawsuit against Lighthouse and Ambos fell within the "protected activity" parameters of Code of Civil Procedure section 425.16, the burden shifted to plaintiffs to demonstrate the probability that they would prevail on the merits against Lighthouse and Ambos. (See, e.g., *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89; *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 468-469; *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 34-35.) Plaintiffs did not oppose the motion in the trial court or appear at the hearing, however. On appeal, they concede they "refused to pay any credence to the [anti-SLAPP] motion as it was totally baseless and inappropriate."

Having failed to oppose the special motion to strike in the trial court, plaintiffs have forfeited their right to do so for the first time on appeal. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264-265 [the purpose of the forfeiture rule is to encourage

parties to bring errors to the attention of the superior court “so that they may be corrected or avoided and a fair trial had”].)

As prevailing defendants on the special motion to strike, Lighthouse and Ambos were statutorily entitled to attorney fees and costs. (Code Civ. Proc., § 425.16, subd. (c)(1).) We apply an abuse of discretion standard to review the trial court’s award. (*Stratton v. Beck* (2017) 9 Cal.App.5th 483, 496.)

Lighthouse and Ambos noticed the appropriate motion and asked for an award of \$6,610 in attorney fees and \$930 in costs against plaintiffs. Plaintiffs opposed this motion, and Lighthouse and Ambos filed a reply brief.

The trial court rejected plaintiffs’ argument that the motion was untimely. No notice of judgment or other order had been filed, and Lighthouse and Ambos filed the motion within 180 days of the court’s ruling. The court issued a tentative ruling indicating it was prepared to award the requested costs, but reduced the attorney fees by \$1,100.00.

Plaintiffs did not appear at the hearing on the attorney fees motion. The trial court’s tentative ruling became its order, and Lighthouse and Ambos were awarded a total of \$6,440.00 in fees and costs.

On appeal, plaintiffs reprise their timeliness argument and contend the fees and costs awarded were excessive. Plaintiffs have the burden to demonstrate the trial court abused its discretion. They failed to argue the excessiveness claim and did not cite to the record.

Nor have plaintiffs established the motion was untimely. “A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under

Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first.” (Cal. Rules of Court, rule 3.1700(a).) The record does not include a date for entry of judgment. Without that date, we must presume the 180-day window applied, and the motion was timely.

DISPOSITION

We dismiss the appeal as to Auctionarium and otherwise affirm. Lighthouse and Ambos are awarded their costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.